

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,)	CRIMINAL
)	Corpus Christi, Texas
Plaintiff,)	Tuesday, September 15, 2015
)	(9:48 a.m. to 10:23 a.m.)
vs.)	(11:02 a.m. to 11:43 a.m.)
)	
JIMMY GARZA, JR.,)	CASE NO: 2:15-CR-0691-1
RAMIRO SERRATA, JR.,)	CASE NO: 2:15-CR-0691-2
)	
Defendants.)	

REARRAIGNMENT

BEFORE THE HONORABLE HAYDEN HEAD,
SENIOR UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Case Manager:	Sylvia Syler
Court Recorder:	Judith F. Alvarez
Deputy U.S. Marshal:	Emily Maddox / Eric Haag Don Mihelich
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ORIGINAL AND ONE COPY AT THE OFFICIAL RATE.
General Order 94-15, United States District Court,
Southern District of Texas.

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 Corpus Christi, Texas; Tuesday, September 15, 2015; 9:48 a.m.

2 (Call to Order)

3 THE COURT: Well, let's proceed with Garza-Serrata.

4 THE CLERK: Yes, sir. C15-691, *United States of*
5 *America versus Jimmy Garza and Ramiro Serrata.*

6 MR. FISHMAN: Good morning, your Honor, Jared Fishman
7 for the United States, also with Ruben Perez and Nicholas
8 Durham.

9 THE COURT: Good morning.

10 MR. JIMENEZ: Fred Jimenez for Mr. Garza.

11 MR. FUGATE: Sam Fugate for Mr. Serrata.

12 THE COURT: Well, I wanted to have this hearing this
13 morning to find out where we were. So why doesn't the
14 Government tell me? Who wants to speak for the Government?

15 MR. FISHMAN: I will --

16 THE CLERK: The Defendants are not here.

17 THE COURT: Please be seated.

18 Where are the Defendants? Sylvia?

19 THE CLERK: They're coming, your Honor.

20 THE COURT: Well, we did call the case.

21 THE CLERK: Yes, your Honor. Well, we just called
22 the case, your Honor.

23 THE COURT: Uh-huh.

24 Why don't you take your seat over there by the table
25 until we find out where we are? Go to the table, please, sir.

1 You're Mr. Durham?

2 **MR. FISHMAN:** Fishman, your Honor.

3 **THE COURT:** Fishman.

4 All right, sir. Where are we in the case?

5 **MR. FISHMAN:** Your Honor, we've reached a plea
6 agreement with Mr. Serrata. We're still in discussions with
7 Mr. Garza though we do believe that case will also be resolved
8 with a plea.

9 **THE COURT:** Mr. Jimenez, what's up?

10 **MR. JIMENEZ:** Mr. Garza -- Judge, simply I just
11 haven't enough time to complete discovery on the case but we
12 are headed to a plea. My understanding is the same offer that
13 was relayed to Mr. Serrata is being relayed to Mr. Garza. I'd
14 ask the Court possibly until Monday. Certainly I should have
15 everything done by then.

16 **THE COURT:** Doesn't that require the attorneys to
17 come back down here?

18 **MR. JIMENEZ:** It does and I thought the -- it does,
19 Judge, and I maybe can do it this week but my understanding is
20 that they wanted to leave today anyway.

21 **THE COURT:** I'm sorry?

22 **MR. JIMENEZ:** That they wanted to leave today anyway.

23 **THE COURT:** Well, it can't be Monday and I have jury
24 duty Tuesday.

25 Isn't that what I told you, Sylvia, that it's

1 Tuesday?

2 **THE CLERK:** No, your Honor. Yes, your Honor.

3 **THE COURT:** I did tell you. What day did I tell you?
4 I know I told you.

5 **(Court conferred with clerk)**

6 **THE COURT:** Why don't you gentlemen be seated just a
7 minute?

8 Where -- what is the plea to be in the -- is the
9 Garcia case?

10 **MR. FISHMAN:** Yes, your Honor. The Government would
11 -- I'm sorry. The Defendant Mr. Serrata would plead to an --

12 **THE COURT:** Serrata.

13 **MR. FISHMAN:** -- information that charges a
14 conspiracy count as well as one count of 249 to commit a crime
15 based on sexual orientation and the indictment would be
16 dismissed at the time of sentencing.

17 **THE COURT:** Has it been -- has the plea agreement
18 been reduced to writing?

19 **MR. FISHMAN:** Yes, your Honor.

20 **THE COURT:** Have these two Defendants been convicted
21 of this crime in State court?

22 **MR. FISHMAN:** No, your Honor.

23 **THE COURT:** Have they ever been charged in State
24 court?

25 **MR. FISHMAN:** No, your Honor.

1 **THE COURT:** Have a seat. Let me just look at this
2 indictment real quick.

3 **(Pause)**

4 **THE COURT:** It was Count Three?

5 **MR. FISHMAN:** I'm sorry, your Honor?

6 **THE COURT:** Was it Count One and Three?

7 **MR. FISHMAN:** Well, it'd be One and Three, however,
8 and charged in the indictment, Count Three has two
9 enhancements. So the Government will be dismissing the
10 enhancing factors of Count Three. Our proposition was to do it
11 as an information. However, if the Court has a different way
12 that they would -- that the Court would like us to proceed,
13 we're willing to do that as well.

14 **THE COURT:** Is there any problem with just arraigning
15 him without the enhancing language?

16 **MR. FISHMAN:** I don't believe so, your Honor. I
17 typically handle it through an information. However, I don't
18 believe that would be a problem to do it that way.

19 **THE COURT:** Well, why would we need to have him
20 basically plead to an information just to reduce -- to take out
21 some enhancements. Aren't the elements the same --

22 **MR. FISHMAN:** The elements of the defense are the
23 same, yes, your Honor.

24 **THE COURT:** -- except for the enhancements which
25 you'd have to prove for sentencing purposes.

1 **MR. FISHMAN:** Well, it changes the maximum sentence
2 available to the Defendant.

3 **THE COURT:** Right. So it's in his favor.

4 **MR. FISHMAN:** Yes, your Honor.

5 **THE COURT:** Let's talk jurisdiction.

6 **MR. FISHMAN:** Yes, your Honor.

7 **THE COURT:** What is the jurisdictional basis for
8 Count Two?

9 **MR. FISHMAN:** Count Two --

10 **THE COURT:** Excuse me -- for Count Three.

11 **MR. FISHMAN:** For Count Three, it's interstate
12 commerce, your Honor.

13 **THE COURT:** Where is the interstate commerce here?

14 **MR. FISHMAN:** In this particular case, the Defendants
15 used weapons that traveled in interstate commerce which are
16 covered by the statute under 249(a)(2).

17 **THE COURT:** So you don't intend to offer proof with
18 respect to the other recited elements or other recited
19 jurisdictional hooks?

20 **MR. FISHMAN:** Well, if this case were to proceed to
21 trial, yes, your Honor --

22 **THE COURT:** But today?

23 **MR. FISHMAN:** Today, your Honor, the parties -- the
24 Defendant would acknowledge that the weapon that he used
25 traveled in interstate commerce.

1 **THE COURT:** Which was?

2 **MR. FISHMAN:** Which was both a broom as well as there
3 was a handgun involved in this case.

4 **THE COURT:** How did the broom travel in interstate
5 commerce?

6 **MR. FISHMAN:** The broom was manufactured in Mexico
7 and then brought into Texas to be sold at the Family Dollar
8 store here in Corpus Christi.

9 **(Pause)**

10 **THE COURT:** You can be seated, thank you.

11 **MR. FISHMAN:** Thank you, your Honor.

12 **THE COURT:** Why don't we just stay a little relaxed
13 and if I ask you some questions, just remain seated?

14 **MR. FISHMAN:** Thank you, your Honor.

15 **(Pause)**

16 **THE COURT:** It's an awkwardly written statute.

17 **MR. FISHMAN:** Yes, your Honor.

18 **THE COURT:** The "or" is in wrong place. The "or,
19 o-r," is in wrong place. It reads, "Whoever whether or not
20 acting under color of law willfully causes bodily
21 injury to any person or through the use of fire,
22 firearm or dangerous weapon attempts to cause bodily
23 injury because of perceived race or color shall be
24 imprisoned not more than ten years." That reads that
25 -- literally reads to my mind and sight that the use of -- that

1 the words "Through the use of fire, firearm, dangerous weapon,
2 incendiary device" applies to attempts to cause bodily injury.

3 What it should read is -- and I think it does --
4 Congress meant it to read, "Whoever, whether or not acting
5 under color of law, through the use of fire, firearm,
6 or firearm willfully causes bodily injury or attempts
7 to cause bodily injury." The "or" has a comma after
8 it and refers to the prepositional clause, "Through the use of
9 fire," attempts to enter.

10 Or you could say it another way, "Willfully causes
11 bodily injury to any person through the use of fire, firearm,
12 et cetera or attempts to cause bodily injury."

13 **MR. FISHMAN:** Yes, your Honor.

14 **THE COURT:** The --

15 **MR. FISHMAN:** My understanding of the statute is that
16 the three ways laid out call for attempt of crimes that do not
17 involve the bodily injury. So in our particular case, it's
18 charged as willfully causing bodily injury because of the
19 actual or perceived --

20 **THE COURT:** Okay.

21 **MR. FISHMAN:** -- sexual orientation or race.

22 **THE COURT:** But where is the fire, firearm, dangerous
23 weapon go?

24 **MR. FISHMAN:** Well, that component would be in an
25 attempt crime.

1 **THE COURT:** Not the -- I don't think that's right. I
2 mean, that -- doesn't it mean that whoever causes bodily injury
3 to person through fire, firearm, dangerous weapon or incendiary
4 device or attempts to cause that has committed the crime
5 because of perceived race? Are you telling me that fire,
6 firearm, dangerous weapon, incendiary device only apply to
7 attempt?

8 **MR. FISHMAN:** I believe they only apply to attempt
9 but there's none -- they're applicable that one can commit a
10 bodily injury using firearms -- firearms, incendiary devices or
11 dangerous weapons. However, one can't attempt to commit a hate
12 crime that's actionable without one of those items.

13 **THE COURT:** So you can commit the hate crime by only
14 causing bodily injury --

15 **MR. FISHMAN:** Yes, your Honor.

16 **THE COURT:** -- without regard to the fire or without
17 regard to firearm or dangerous weapon or incendiary device?

18 **MR. FISHMAN:** Yes, your Honor. I think the best
19 example would be if --

20 **THE COURT:** Well, why would anybody write a statute
21 like that?

22 **MR. FISHMAN:** I can't say, your Honor. I think it
23 was to broaden the type of conduct that was conduct -- that was
24 criminalized with respect to attempt. So, for example, if a
25 person were to punch someone because of their race or one of

1 the other protective classes, that would covered under the
2 statute because bodily injury was caused assuming that the
3 punch led to bodily injury.

4 **THE COURT:** But you can only attempt to do that if
5 you are using fire or firearm. You can't swing and miss?

6 **MR. FISHMAN:** Correct, your Honor.

7 **THE COURT:** You can't swing and miss and that's
8 not --

9 **MR. FISHMAN:** That appears to be the way the statute
10 -- because there's no creation of bodily injury. However, if
11 one had a handgun and pointed it at your head and didn't
12 discharge or use it as a weapon apart from to cause that fear,
13 that --

14 **THE COURT:** So you can attempt to cause by -- you
15 can't attempt the crime by raising a stick above your head?

16 **MR. FISHMAN:** That's my understanding of the statute,
17 your Honor.

18 **THE COURT:** Or by getting out a rope? Putting
19 somebody up to hang with a rope and scaring the heck out of him
20 is not enough?

21 **MR. FISHMAN:** Well, if there was some degree of
22 bodily injury and bodily injury --

23 **THE COURT:** Well, I mean, you just --

24 **MR. FISHMAN:** -- would encompass pain --

25 **THE COURT:** No pain. No pain, just a very compliant

1 person. Get up on the back of that truck, Buddy, we're going
2 to hang you. And about that time, the Sheriff arrives and
3 says, "Break it up, fellows." Why would anybody create a
4 statue like that?

5 **MR. FISHMAN:** My understanding of the statutory
6 intent was to limit the scope of the statute.

7 **THE COURT:** Of the attempt?

8 **MR. FISHMAN:** Of the --

9 **THE COURT:** Or does it limit the scope of the
10 "Willfully causes bodily injury"?

11 **MR. FISHMAN:** Does which part, use of the firearm --

12 **THE COURT:** The language "Through the use of fire,
13 firearm, explosive device" -- is that only -- does that limit
14 willfully causes bodily injury?

15 **MR. FISHMAN:** No, your Honor.

16 **THE COURT:** No, I agree that it shouldn't and we have
17 a case in Texas, I think, that -- in which a fellow was beaten
18 up.

19 **MR. FISHMAN:** Yes, your Honor, the *Cannon* case.

20 **THE COURT:** Right. And there was no requirement of
21 weapons or devices.

22 **MR. FISHMAN:** Correct. They just beat that
23 gentleman.

24 **THE COURT:** But you can attempt to cause somebody
25 bodily injury and not be a violation of the statute even with

1 evil motive as set forth there in the statute as long as you
2 don't use a fire or firearm or a dangerous weapon or an
3 explosive device.

4 **MR. FISHMAN:** I believe that's correct, your Honor.

5 **THE COURT:** So you can use a bat.

6 **MR. FISHMAN:** Well, I think a bat would be a
7 dangerous weapon. I think in your earlier example, a rope
8 would be a dangerous weapon, any weapon that has the potential
9 to cause serious bodily injury or harm. The fact that in your
10 scenario, the victim did not get injured, I don't believe that
11 would make it less of a crime in that scenario since there was
12 a dangerous weapon used.

13 **THE COURT:** You just can't use a fist? Is a fist a
14 dangerous weapon? I think we have cases in Texas that says it
15 is. How about a beer can?

16 **MR. FISHMAN:** I think a beer can can be a dangerous
17 weapon depending on the manner that it was used. The case law,
18 as your Honor is well aware, is rather broad on what can be a
19 dangerous weapon, depending on the manner that it's used.

20 **THE COURT:** Well, can you tell me any reason why it
21 should be there?

22 **MR. FISHMAN:** Why what should be there?

23 **THE COURT:** Why this language should be there.

24 **MR. FISHMAN:** My only understanding is that Congress
25 was attempting to narrow the number of crimes that would be

1 covered by this particular --

2 **THE COURT:** Well, then why wouldn't that apply as
3 well to the first clause? That's why I'm saying this doesn't
4 make sense. It doesn't make sense that you could commit the
5 crime one way and attempt to attempt to commit the crime a
6 different way and have the same punishments. Right? Wrong?

7 **MR. FISHMAN:** The attempt -- well, the attempt would
8 only be covered --

9 **THE COURT:** That doesn't matter for purposes of this
10 case because we're not talking attempt.

11 **MR. FISHMAN:** Right.

12 **THE COURT:** We're talking about a completed act.

13 **MR. FISHMAN:** That caused bodily injury. It happened
14 to also have involved dangerous weapons but the dangerous
15 weapon is relevant only for the jurisdictional hook for the
16 sexual orientation component.

17 **THE COURT:** So are there different intents? What
18 does "willfully" mean in this statute? Not the conspiracy
19 statute but in the substantive statute.

20 **MR. FISHMAN:** I don't believe that has been defined
21 any differently than "willfully" has traditionally been used in
22 "knowingly and intentionally" with respect to the intent to
23 create the harm -- sorry, with the intent to cause the bodily
24 injury -- to knowingly and intentionally cause that harm to the
25 victim.

1 **THE COURT:** What does "willfully" mean in the
2 conspiracy statute?

3 **MR. FISHMAN:** That they knew of the purpose of the
4 conspiracy and committed overt acts with the intention to
5 complete that conspiracy.

6 **THE COURT:** You think that's all it means? It
7 doesn't mean with evil purpose to disobey or disregard the law?

8 **MR. FISHMAN:** Well, they have to know that the
9 purpose of the agreement is to violate the law, I guess, your
10 Honor.

11 **THE COURT:** Does that mean they have to know what the
12 law is?

13 **MR. FISHMAN:** No, I don't believe so, so long as you
14 intend to create the harm that that law is intended to prevent
15 against.

16 **THE COURT:** Do you know why this case was not
17 prosecuted in State court?

18 **MR. FISHMAN:** I can't speak, your Honor, as to why
19 the Corpus Christi Police closed their investigation. They had
20 an investigation the night that the incident started and they
21 closed their investigation. My understanding based on the
22 paperwork provided us to -- by Corpus Christi, the victim was
23 -- they believed the victim was no longer with their
24 investigation.

25 **THE COURT:** Has he cooperated with you?

1 **MR. FISHMAN:** Fully, your Honor.

2 **THE COURT:** And is the victim aware of today's
3 hearing?

4 **MR. FISHMAN:** Yes, your Honor.

5 **THE COURT:** How do you know that?

6 **MR. FISHMAN:** We called him.

7 **THE COURT:** You did?

8 **MR. FISHMAN:** Yes, your Honor.

9 **THE COURT:** And did you talk to him about the
10 proposed agreement?

11 **MR. FISHMAN:** Yes, your Honor.

12 **THE COURT:** And was he satisfied with that?

13 **MR. FISHMAN:** Yes, your Honor.

14 **THE COURT:** Is he here today?

15 **MR. FISHMAN:** No, he is not.

16 **THE COURT:** Did you tell him he could be here?

17 **MR. FISHMAN:** Your Honor, we -- as to the status
18 hearing, no, we did not, your Honor. As to the potential
19 change of plea, that happened late last night and so we
20 contacted him to let him know but we were unable to reach him.
21 We have discussed his rights under The Victim of Crimes
22 Prevention Act and I --

23 **THE COURT:** He does -- he has a right to be here.

24 **MR. FISHMAN:** Yes, your Honor.

25 **THE COURT:** Does he know he has a right to be here?

1 **MR. FISHMAN:** Does he know he has a right to be at
2 any plea hearing or any status hearing?

3 **THE COURT:** Any plea hearing.

4 **MR. FISHMAN:** Yes, your Honor, he does know that.

5 **THE COURT:** He just doesn't know today is a plea
6 hearing?

7 **MR. FISHMAN:** Yes, your Honor.

8 **THE COURT:** He thought today was just going to be a
9 status hearing?

10 **MR. FISHMAN:** Yes, your Honor --

11 **THE COURT:** So he --

12 **MR. FISHMAN:** -- because it was so late last night
13 that I was -- we believed that only to be a status hearing.

14 **THE COURT:** He didn't know that there was going to be
15 the reduction of the charge?

16 **MR. FISHMAN:** We've discussed what the charges --
17 what our proposed plea offer to both Defendants was with the
18 victim prior to yesterday. I believe it was two weeks ago.

19 **THE COURT:** Why can't you get in touch with him? Do
20 you know?

21 **MR. FISHMAN:** We have one phone number for him. We
22 called that number and it went straight to voice mail. I can
23 check my phone to see if he's returned the phone call but as of
24 the time we entered this court, I had not heard back from him.

25 **THE COURT:** I would feel more comfortable if he knew

1 exactly what was occurring.

2 **MR. FISHMAN:** Yes, your Honor.

3 **THE COURT:** Why don't you -- have you had trouble
4 getting in contact with him before?

5 **MR. FISHMAN:** Yes, your Honor. We ultimately always
6 get in contact with him but he hasn't had his own cell phone.
7 So we've had to go through a number of routes to get in contact
8 with him.

9 **THE COURT:** Is the number you're calling his cell
10 phone?

11 **MR. FISHMAN:** I believe it's a cell phone that is
12 either associated with a friend of his or with his company.
13 The voice mail is his company's voice -- it says the company
14 name.

15 **THE COURT:** Do the Defendants know what that company
16 name is?

17 **MR. FISHMAN:** No.

18 **THE COURT:** Is that for his security?

19 **MR. FISHMAN:** Yes, your Honor.

20 **THE COURT:** Are you concerned about the Defendant's
21 security at this time?

22 **MR. FISHMAN:** The victim's?

23 **THE COURT:** I mean, the victim's security at this
24 time.

25 **MR. FISHMAN:** No, your Honor.

1 **THE COURT:** Is that because they're in custody?

2 **MR. FISHMAN:** Yes.

3 **THE COURT:** Did I read that there was concern for the
4 victim's safety because of threats from persons associated with
5 the Defendants?

6 **MR. FISHMAN:** In terms of direct threats towards the
7 victim? No, the victim has expressed his concerns for his own
8 safety as a result of what happened to him and the fact that
9 this case has continued to be pending but in terms of any
10 direct threats, we have no evidence of any direct threats
11 either by the Defendants or by any of their associates towards
12 the victim. I think it's more a generalized fear given the
13 nature of this case.

14 **THE COURT:** What discovery haven't you seen,
15 Mr. Jimenez?

16 **MR. JIMENEZ:** There's four boxes, Judge, and this
17 case has moved rather quickly and I have not seen it all.

18 **THE COURT:** How much have you -- how much is there
19 that you haven't seen?

20 **MR. JIMENEZ:** I've listened to several recordings and
21 one CD of discovery.

22 **THE COURT:** So that's what percentage?

23 **MR. JIMENEZ:** Probably 50 percent.

24 **THE COURT:** How long did that take you?

25 **MR. JIMENEZ:** Two days.

1 **THE COURT:** When is the trial set?

2 **MR. FISHMAN:** Trial is currently set for September
3 29th.

4 **THE COURT:** Do you want to proceed with a plea this
5 morning, Mr. Fugate?

6 **MR. FUGATE:** I do, your Honor.

7 **THE COURT:** Is that what you want to do?

8 **MR. FUGATE:** We've had -- although it's been a quick
9 setting, we've -- I've worked real diligent and real hard on
10 getting through all the discovery and Mr. Jimenez is right.
11 It's quite extensive but we're -- I feel comfortable that we
12 understand the case. We understand the law and we've worked
13 out an agreement with the Government that we'd ask the Court to
14 consider. So we're ready.

15 **THE COURT:** Okay.

16 **MR. FUGATE:** And also, Judge, I took into
17 consideration -- and I know it doesn't really have a whole lot
18 to do with it because my client's rights are more important but
19 I know these gentlemen have to travel a long ways and I thought
20 we were ready to take care of this case.

21 **THE COURT:** Has the other gentleman showed up yet?

22 **THE CLERK:** Yes, your Honor. He's here.

23 **MR. SPEAKER:** He's here.

24 **THE COURT:** Is that for what purpose?

25 **THE CLERK:** For re-arraignment, your Honor.

1 **THE COURT:** I'm going to call a recess in the case
2 we're hearing at this time. In the meantime -- during that
3 recess, I'm going to take a plea in another case. That will
4 give Government's counsel an opportunity to contact the victim
5 and to resolve any other matters that need to be resolved
6 before I take -- proceed to take the plea from the Defendant.
7 Is it Serrata? Is your client Serrata?

8 **MR. FUGATE:** That's correct, your Honor.

9 **THE COURT:** Thank you.

10 **MR. FUGATE:** Thank you, Judge.

11 **MR. FISHMAN:** And, your Honor, is it your preference
12 for us not to have the Defendant plead to an information but
13 rather amend the indictment, whether that be done orally or in
14 writing?

15 **THE COURT:** Just orally.

16 **MR. FISHMAN:** Orally amend --

17 **THE COURT:** Just -- yeah --

18 **MR. FISHMAN:** -- the indictment to remove --

19 **THE COURT:** -- and we'll make a note on the record
20 that he didn't -- he is not admitting to that element and that
21 element or those enhancements are not being offered to the
22 Court as part of the conviction.

23 **MR. FISHMAN:** And so given that there's still a
24 second Defendant charged with those enhancements, it would be
25 only to Mr. Serrata?

1 **THE COURT:** Exactly. Exactly.

2 **MR. FISHMAN:** Okay, your Honor. We'll need to make
3 some adjustments to the plea paperwork to reflect that.

4 **THE COURT:** Okay. I don't want to go through an
5 information and I don't -- that's what Grand Juries are for.

6 **MR. FISHMAN:** Whatever suits the Court, we're happy
7 to do whatever the Court's preference is.

8 **THE COURT:** Did you have something, sir?

9 **MR. PEREZ:** Yes, your Honor. In order for us to
10 proceed with the indictment, we just need to change the plea
11 papers.

12 **THE COURT:** Right.

13 **MR. PEREZ:** May we be excused to go to the U.S.
14 Attorney's office and do that, your Honor?

15 **THE COURT:** Yes, you may. Yes.

16 **MR. PEREZ:** How much time do we have, your Honor?

17 **THE COURT:** How much time do you need? I mean, just
18 do it whenever you need to do it.

19 **MR. PEREZ:** Thirty minutes, your Honor?

20 **THE COURT:** Fine. We'll do it at 11:00 o'clock?

21 **MR. PEREZ:** Okay.

22 **THE COURT:** Does that suit your schedule?

23 **MR. FUGATE:** That's fine, Judge. I just have to be
24 finished by noon.

25 **THE COURT:** Where have you got to be?

1 **MR. FUGATE:** I have -- we have some mayor duties this
2 afternoon. We're selecting a new city manager and we start the
3 interviews at 1:15.

4 **THE COURT:** We can get it done.

5 **MR. FUGATE:** Thank you, Judge.

6 **MR. FISHMAN:** Thank you.

7 **MR. PEREZ:** Your Honor, if we're a few minutes, you
8 won't hold that against us, your Honor? We try like heck to be
9 here on time.

10 **THE COURT:** Don't worry about it if you're late. I'm
11 not going to do anything about it, you know. I'm just going to
12 deal with the schedule as it is. I'm not going to fuss at
13 anybody, if that's what you're worried about.

14 **MR. PEREZ:** Thank you, your Honor. And, Judge, may I
15 have five minutes with my client?

16 **THE COURT:** Yes.

17 **(A recess was taken from 10:23 a.m. to 11:02 a.m.)**

18 **THE COURT:** Are these Defendants separated?

19 **MR. JIMENEZ:** They are, your Honor.

20 **THE COURT:** Unless there's some reason, we might as
21 well have both Defendants in here.

22 All right. What is your name, please?

23 **THE DEFENDANT:** Ramiro Serrata, Jr.

24 **THE CLERK:** He hasn't been sworn, your Honor.
25 Would you raise your right hand to be sworn?

1 **(Defendant sworn)**

2 **THE CLERK:** Thank you.

3 **THE COURT:** Mr. Serrata, I'm told you intend to plead
4 guilty to Count One and to Count Three; is that correct?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** How old are you?

7 **THE DEFENDANT:** Twenty-two years old.

8 **THE COURT:** Where were you born?

9 **THE DEFENDANT:** Corpus Christi, Texas.

10 **THE COURT:** Where do you live?

11 **THE DEFENDANT:** I live in Robstown, Texas.

12 **THE COURT:** Did you go to school?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** For how many years?

15 **THE DEFENDANT:** Tenth grade -- I didn't complete the
16 tenth grade.

17 **THE COURT:** Do you read and write English?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Do you speak English?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Are you in good health?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** What is your job?

24 **THE DEFENDANT:** I was working for TDX Associates
25 doing firing, sandblasting and painting.

1 **THE COURT:** Have you ever been treated by a doctor
2 for treatment of a mental disease or mental disorder?

3 **THE DEFENDANT:** No, sir.

4 **THE COURT:** Have you taken any narcotic drugs or
5 medicines or pills or drunk any alcoholic beverages in the past
6 24 hours?

7 **THE DEFENDANT:** No, sir.

8 **THE COURT:** Counsel, is your client competent?

9 **MR. FUGATE:** He's competent to stand trial, your
10 Honor.

11 **THE COURT:** I find him to be so.

12 Are you represented by an attorney, Mr. Serrata?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** And who is that?

15 **THE DEFENDANT:** Sam Fugate.

16 **THE COURT:** Did you hire him or did the Court appoint
17 him?

18 **THE DEFENDANT:** Court-appointed.

19 **THE COURT:** Have you had enough time to discuss your
20 case with him?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Are you satisfied with his services?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Has he been a good attorney for you?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Is he following your instructions?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you need any more time with him before
4 we proceed to take your plea today?

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** Do you understand he's been appointed to
7 represent you at every stage of these proceedings including a
8 jury trial if you would like?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Have you received a copy of the
11 indictment?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And have you read it and discussed it
14 with your attorney?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Do you understand it?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Under the Constitution and laws of the
19 United States, you're entitled to enter a plea of not guilty to
20 Indictment Number 691 and to require the United States to
21 establish your guilt to a jury and prove to a jury beyond a
22 reasonable doubt by its own evidence that you are guilty. You
23 do not have to prove that you are innocent. You would be
24 presumed innocent and it would be the obligation of the
25 Government to prove to the jury beyond a reasonable doubt that

1 you're guilty. Your attorney would be present with you
2 throughout the entire trial to provide required legal services.
3 Do you understand?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** To prove that you are guilty, it would be
6 the obligation of the Government to present its witnesses in
7 open court before the jury, before you, before your attorney
8 and before me. You would have the right to see and to hear
9 them testify, the right to question and cross examine them, the
10 right to object to evidence offered by the Government. You
11 would have the right to offer your own witnesses and evidence
12 to the jury. Just like the Government can present a case to
13 the jury by presenting evidence, you may do the same.

14 You may call witnesses and present evidence. You
15 yourself may be a witness if you choose to be so. You can
16 testify if you'd like to do so to the jury and speak to them
17 about your case but you're not required to do so. You have the
18 right to remain silent. Do you understand?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** No one can make you testify or speak to
21 the jury.

22 If you plead guilty, as I'm told you intend to do,
23 there will be no trial. I will find you guilty because you
24 entered your plea of guilty. You'll be giving up your right to
25 silence because you have declared your guilt in open court and

1 because I'll ask you questions to understand the case. Do you
2 understand?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Do you want to have a trial by jury or do
5 you want to plead guilty?

6 **THE DEFENDANT:** I plead guilty, sir.

7 **THE COURT:** And are you willing to give up your right
8 of silence and answer questions to me about the case?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. Let's make sure you understand
11 that. I am going to ask you questions about what happened. As
12 a matter of fact, the Government's counsel is going to tell me
13 what it thinks it could prove and then I'm going to turn to you
14 and I'm going to say, "Is that what happened?"

15 **THE DEFENDANT:** Okay.

16 **THE COURT:** And if -- I don't know what you're going
17 to say. You may agree or disagree but then I will ask you
18 questions about what you did and you will need to answer my
19 questions and you'll be under oath and your words will be taken
20 down on the record of this proceeding and you're present with
21 your attorney in open court. If you don't tell me the truth,
22 you can be prosecuted for perjury.

23 So when I ask you these questions and you answer
24 them, you'll be giving up your right to silence. And also when
25 you declare your guilt in open court by saying at the

1 appropriate time, "guilty," then you're giving up your right to
2 silence.

3 So are you willing to give up your right to silence
4 as I've described it to you?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** I find the Defendant understands the
7 rights available to him and that he's waived the right to trial
8 and right to silence. I find the Defendant understands the
9 right to counsel and he's satisfied with counsel.

10 Have you discussed with your attorney the charges in
11 the indictment to which you're pleading guilty?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Do you understand the charges?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Well, they're a little bit complicated.
16 So why don't we talk about them?

17 In the first count of the indictment to which you
18 intend to plead guilty, you're pleading guilty to a crime of
19 conspiracy in violation of Title 18, Section 371 of the United
20 States Code. Now, that statute makes it unlawful for two or
21 more persons to agree together and make an agreement to violate
22 the law of the United States and in the course of that
23 conspiracy commit an act intended to bring out and bring about
24 the purpose of the conspiracy.

25 Here, the purpose of the conspiracy is alleged to be

1 two other statutes. The first purpose of the conspiracy is to
2 cause bodily injury to another person because of that person's
3 perceived race, color or religion. The second purpose is to do
4 the same because of that person's perceived sexual orientation.
5 Do you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Do you think that's what you did?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** So the Government would have to prove
10 that there was an agreement between two or more persons, you
11 being on one of them and that agreement was voluntarily and
12 knowingly entered, that is, you knew about the agreement, you
13 decided you wanted to join it and you did join it. And that
14 agreement here was that you would willfully cause injury to
15 another person, bodily injury, hurt to them, physical hurt to
16 them in the first instance because of their race and in the
17 second instance, because of their sexual orientation. Do you
18 understand?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Specifically, black and gay. Do you
21 understand that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** The overt acts are listed here on the
24 second page of the indictment and the Government would have to
25 prove one of those acts was undertaken by a member of the

1 conspiracy with the intention that the conspiracy be achieved.
2 The Government would have to prove that by entering the
3 conspiracy, you intended to violate the law of the United
4 States in knowing and intentional disregard of it with evil
5 purpose, bad purpose to disobey and disregard the law. Do you
6 understand?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Now, Count Three is one of the objects of
9 the conspiracy. It's known as the "substantive count." You're
10 not pleading guilty to Count Two but it would be other
11 substantive count. You are admitting to an agreement to commit
12 Count Two but in Count Three to which you're entering your plea
13 of guilty, you are pleading guilty to a charge that you
14 actually did with the aid and assistance of Garza -- by him and
15 your aid and assistance to him that you actually did injure a
16 person by the name of K.G and that you did so intentionally and
17 willfully with the intent to bring about harm with bad purpose
18 to disregard and disobey the law, that is to say, you willfully
19 injured him. It wasn't something that just happened by
20 accident or negligence, that is, you undertake in your own mind
21 and intention to harm him because of his gender or his sexual
22 orientation.

23 The Government would have to prove that you assaulted
24 him to cause the bodily injury and that you did so with a
25 weapon that had traveled in interstate or foreign commerce.

1 Now, I understand that that's supposed to be a broom and the
2 Government would have to prove that's a broom, had traveled in
3 interstate or foreign commerce and the same thing is true with
4 the weapon, the pistol. I understand that the Government told
5 me earlier that there was a pistol that was involved. I don't
6 know anything about it but the Government would have to prove
7 that that pistol moved in interstate commerce at some time
8 before you possessed it or even that you took it in interstate
9 commerce.

10 But the Government would have to prove that that
11 weapon played a part in a role in the assault. Do you
12 understand that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you believe that you did that? If I
15 haven't described it -- if what I'm saying to you doesn't ring
16 true and if you're saying to yourself, hey, I didn't do that --

17 **MR. FUGATE:** There's some confusion because the
18 pistol was on the Co-defendant and he aided and abetted him.
19 So that's --

20 **THE COURT:** Okay. So the question is -- remember I
21 told you that the Government can prove this case by your aiding
22 and abetting, by you're giving assistance to and helping the
23 other Co-Defendant commit this crime.

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** And the Government would have to prove

1 that you knew that this crime was being committed and that you
2 participated in it as if it was something you wanted to bring
3 about.

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** All right. Let's talk about punishments.
6 The punishment for Count Three has a maximum possible
7 punishment of ten years, a maximum fine of \$250,000 and a
8 period of supervision of your behavior of not more than three
9 years with a period of revocation of two years and a mandatory
10 100-dollar special assessment.

11 Is this one of those statutes for which Congress has
12 recently amended the law? It is but this would have occurred
13 before it. So we don't have to worry about that.

14 And on the occasion of your sentencing, I will
15 calculate and consider the advisory guidelines of the United
16 States Sentencing Commission together with all the other
17 sentencing factors of Title 18, Section 3553 and any departures
18 from them.

19 Have you spoken to your attorney about how these
20 guidelines will be calculated?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you understand them?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Okay. Well, they can be a bit confusing.
25 One thing you need to know is these guidelines are advisory.

1 They're not mandatory. I don't have to impose a guideline
2 sentence and if I do, well, I do. If I don't, well, I don't.
3 I will consider all of the sentencing factors and the advisory
4 guidelines are one of those sentencing factors. They play an
5 important role in your sentencing and, therefore, you should
6 understand them.

7 Did your attorney show you a chart of how --

8 **MR. FUGATE:** Judge, in this case, it's kind of --
9 it's a different situation because the sentencing guidelines
10 might not come into play because they're going to be past the
11 statutory maximum in this case and we talked about that.

12 **THE COURT:** Okay. Well, if the sentencing guidelines
13 are beyond the statutory maximum, well, then the maximum
14 possible punishment is ten years. And that's the maximum.

15 **MR. FUGATE:** And we've talked about that.

16 **THE COURT:** Okay.

17 **MR. FISHMAN:** Your Honor, as to Count Two, the
18 maximum punishment is ten years. As to Count One, the maximum
19 punishment is five years.

20 **THE COURT:** Five years, right. I haven't quite
21 gotten to that yet but --

22 **MR. FISHMAN:** To Count Three.

23 **THE COURT:** Okay. Count Three is ten years. Count
24 One is five years maximum. They can be served. They can --
25 the Court has the authority to stack those cases. So that

1 would be ten plus five is fifteen.

2 **MR. SPEAKER:** We talked about that, yes.

3 **THE COURT:** The sentencing guidelines probably don't
4 speak to that with respect to this case. I don't know whether
5 they do or not but they can be served consecutively and you
6 need to know what the maximum possible punishment is.

7 Now, with respect to Count One, the maximum possible
8 punishment is a period of five years. The maximum possible
9 punishment is a 250,000-dollar fine, 100-dollar special
10 assessment and a period of supervision of your behavior not
11 more than three years and you can be required to serve a two-
12 year term of revocation if you violate the terms and conditions
13 of your supervision. In other words, you can be returned to
14 the penitentiary to serve additional sentences of up to ten --
15 up to two years.

16 Is restitution available?

17 **MR. FISHMAN:** Restitution is available, your Honor.
18 I don't believe it's mandatory under the statute. However,
19 there are a number of injuries suffered by the victim including
20 he withdrew from his university as a result of this which may
21 not be able to be calculated in terms of a precise restitution
22 amount. He had a number of medical bills that he is not
23 covered with insurance as a result of that. So there is some
24 degree of restitution in this case that we would seek if the --

25 **THE COURT:** So --

1 **MR. FISHMAN:** -- Defendant has the ability to pay.

2 **THE COURT:** I have the power to impose additional
3 financial requirements that you reimburse the Defendant for
4 injuries that he suffered -- I mean, the victim for injuries
5 that he suffered. Do you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** That can include medical bills, loss of
8 wages, loss of earnings, other expenditures that are caused by
9 that. Do you understand?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** And the parties are satisfied with the
12 Court's description of what the Government must prove?

13 **MR. FISHMAN:** Yes, your Honor.

14 **MR. FUGATE:** Yes, your Honor.

15 **THE COURT:** All right. The Court is satisfied the
16 Defendant understand the charge and the consequences of the
17 plea.

18 Has anyone threatened you or forced you to plead
19 guilty?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** Has anyone promised you leniency if you
22 would plead guilty?

23 **MR. FUGATE:** You need to speak --

24 **THE COURT:** Who makes the decision --

25 **MR. FUGATE:** I told him to speak up. I couldn't hear

1 him.

2 **THE COURT:** Okay. Who makes the decision for you to
3 plead guilty?

4 **THE DEFENDANT:** I do.

5 **THE COURT:** Why are you pleading guilty?

6 **THE DEFENDANT:** Because I'm guilty, sir.

7 **THE COURT:** Is there a plea agreement?

8 **MR. FISHMAN:** Yes, your Honor.

9 **THE COURT:** I think the plea agreement should be in
10 front of you.

11 **MR. FISHMAN:** It's right here.

12 **THE COURT:** And the top of it should say something
13 like, "Memorandum of Plea Agreement." Have you read that
14 document?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Have you discussed it with your attorney?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Do you understand it?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Did you sign it?

21 **THE DEFENDANT:** Yes, sir, I did.

22 **THE COURT:** May I see it? Whichever one is the filed
23 copy -- to be the filed copy.

24 **MR. FISHMAN:** This is the signed copy.

25 **THE COURT:** All right. Is this your copy -- is this

1 your signature, sir, up at the top?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** This is an agreement that you have
4 reached with the United States Attorney's office. You don't
5 have any agreement with me. In return for your plea of guilty
6 to Counts One and Three, the Government is going to dismiss the
7 other counts in the indictment.

8 Now, with respect to Count Three, I understand from
9 earlier discussions that certain language was to be omitted.

10 **MR. FISHMAN:** Yes, your Honor. We would orally amend
11 the indictment for the purpose of this plea agreement to strike
12 the enhancing languages that's contained in Count Three, that
13 being aggravated sexual assault and kidnapping.

14 **THE COURT:** So we would delete the words, "Which
15 offense included aggravated sexual assault and kidnapping"?

16 **MR. FISHMAN:** Yes, your Honor.

17 **THE COURT:** Okay. So you will not be required to
18 enter a plea of guilty or not guilty to that because for
19 purposes of the proceeding, if you plead guilty to Count Three
20 omitting those words, then that satisfies the plea agreement.
21 Do you understand?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And that's -- by omitting that language,
24 that's what permits the punishment to be reduced to a cap of
25 ten years. If you were required to plead to the words, "Which

1 offense included the aggravated sexual assault and kidnapping,"
2 the offense can last as a maximum possible punishment as much
3 as life in the penitentiary. Do you understand?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** I don't see that agreement here in
6 writing but it's on the record and I want to make certain that
7 I have correctly stated my understanding of what the parties
8 intend to do.

9 **MR. FUGATE:** That's my understanding of the
10 agreement. That language was going to be --

11 **THE COURT:** Okay.

12 **MR. FUGATE:** -- deleted and we're not pleading to
13 those elements.

14 **MR. FISHMAN:** Yes, your Honor, and just in terms of
15 the technicality, we would dismiss that language for the
16 purpose of this hearing until the acceptance of a plea and the
17 parties agree that if for whatever reason, the plea was not
18 accepted that that language would continue -- would revert back
19 to the indictment should this case go to trial.

20 **THE COURT:** Do you understand what he just said?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** In other words, if the plea doesn't go
23 through, if you wanted to withdraw your plea later and I permit
24 it, then this language comes back into play and you're facing
25 the maximum possible punishment of life in the penitentiary.

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** I see also that you're being recommended
3 for maximum credit for acceptance of responsibility. And I
4 would presume that whatever that means, you should need to know
5 that I am not required to impose any sentence, certainly not
6 greater than the statutory maximum but you have no promises
7 from me what your sentence will be nor how I will calculate the
8 guidelines or any portion of it and if you're unhappy with your
9 sentence, you can't take back your plea of guilty. Do you
10 understand?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** There's also a provision for your -- some
13 consideration on the part of the Court if the Government makes
14 a request for me to do so by your giving substantial assistance
15 to the Government in the prosecution of other persons involved
16 in this crime or perhaps even other persons involved in other
17 crimes. Do you understand?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** That would be up to the Government to
20 request. Do you understand that?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** At Page 3, Paragraph 7, you're giving up
23 your right to appeal your conviction and the sentence that the
24 Court imposes. You're also giving up your right to file a 2255
25 petition which Defendants use when the case becomes final to

1 ask the Court to look at the case again and see whether or not
2 the conviction can be vacated. That's called a "collateral
3 attack." But you're giving up that right as well to file a
4 2255 petition. Did you know that you were giving up the right
5 to file your appeal of your conviction or sentence?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Did you know you were giving up your
8 right to file a 2255 petition?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And do you want to give those up?

11 **THE DEFENDANT:** Yes, sir.

12 **MR. FUGATE:** He can still file if there's ineffective
13 assistance of counsel, Judge. I think that's in the provision
14 in there.

15 **THE COURT:** Very well.

16 Has anyone promised you what your sentence would be?

17 **THE DEFENDANT:** No -- no, sir.

18 **THE COURT:** Do you understand you have no promises
19 from me that -- of what your sentence --

20 **THE DEFENDANT:** Yes, sir, I understand.

21 **THE COURT:** -- and if -- and as a result, you can't
22 ask to get your case back before a jury because you don't get
23 the sentence that you hoped to receive. Do you understand?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** I find the plea is voluntary. You may

1 arraign the Defendant. The custom in this court is for you to
2 read the charge.

3 **MR. FISHMAN:** Yes, your Honor.

4 **THE COURT:** Read all of Count One.

5 **MR. FISHMAN:** "Count One, 18 U.S.C., Section 371,
6 that on or about March 8th, 2012 in Corpus Christi,
7 Texas in the Southern District of Texas, Defendant
8 Ramiro Serrata, Jr., knowingly and willfully
9 combined, conspired and agreed with others" -- as the
10 indictment reads, "with one another" because he's
11 indicted with Mr. Garza -- "and persons unknown to
12 the Government to commit offenses against the United
13 States of America, to wit, hate crimes in violations
14 of 18 U.S.C., Section 249(a)(1) and 18 U.S.C.,
15 Section 249(a)(2).

16 The object of the conspiracy. It was the plan or
17 purpose of this conspiracy to assault KG, a gay black
18 man, because of his race, color and sexual
19 orientation.

20 Overt act. In furtherance of the conspiracy and to
21 accomplish the objects thereof, the conspirators
22 committed and caused to be committed the following
23 overt acts among others within the Southern District
24 of Texas. The conspirators invited KG into an
25 apartment located at 1339 Tenth Street, Apartment C

1 in Corpus Christi, Texas.

2 Defendant Garza punched KG and said something to the
3 effect of, 'We don't like niggers around here and we
4 especially don't like faggot niggers.' Over the
5 course of approximately three hours, the conspirators
6 assaulted KG with dangerous weapons including, among
7 other things, a handgun, a broom or mop, a frying
8 pan, a coffee mug, a spatula, a belt and a chair.
9 The conspirators also assaulted KG with their hands
10 and feet.

11 During the assault, the conspirators poured a
12 household cleaning agent or chemical solution onto
13 KG's face and eyes. When KG began bleeding, the
14 conspirators forced KG to remove all his clothing and
15 clean the bloody apartment. After KG was completely
16 naked, the conspirators sodomized KG using a broom or
17 mop and an unknown object. The conspirators forced
18 KB to such on the end of the broom or mop that had
19 been used to sodomize him. The conspirators whipped
20 KG with a belt. The conspirators forced KG to drink
21 urine.

22 Throughout the assault, the conspirators prevented KG
23 from leaving the apartment by physical force and
24 threats of force. KG eventually escaped the
25 apartment by jumping out of a window. Throughout the

1 assault, the conspirators repeatedly called KG
2 anti-black and anti-gay slurs such as, but not
3 limited to, 'faggot' and 'nigger' and made other
4 anti-black and anti-gay statements all in violation
5 of Title 18, United States Code, Section 371.
6 Count Three, 18 U.S.C., Section 249, Section (a)(2)
7 and 18 United States Code, Section 2. On or about
8 March 8th, 2012 in Corpus Christi, Texas in the
9 Southern District of Texas, Ramiro Serrata, Jr.,
10 aided and abetted by others and by Jimmy Garza, Jr.
11 did willfully cause bodily injury to KG by assaulting
12 KG, including by sodomizing KG with multiple objects
13 because of KG's actual and perceived sexual
14 orientation, namely that he is gay, which offense
15 included aggravated" -- that language has been
16 stricken pursuant to this plea.

17 "Now, in connection with the offense, the Defendants
18 used weapons that traveled in interstate commerce.
19 Defendants interfered with commercial and other
20 economic activity in which the victim was engaged at
21 the time of the conduct and which offense otherwise
22 affected interstate or foreign commerce all in
23 violation of Title 18, United States Code, Section
24 249(a)(2) and 2."

25 **THE COURT:** How do you plead to Count Number One,

1 sir?

2 **THE DEFENDANT:** Guilty, sir.

3 **THE COURT:** And how do you plead to Count Number
4 Three?

5 **THE DEFENDANT:** Guilty, sir.

6 **THE COURT:** What are the facts?

7 **MR. FISHMAN:** Your Honor, on March 8th, 2012,
8 Defendant Ramiro Serrata, Jr., along with co-conspirator Jimmy
9 Garza, Jr., acting together and with others in Corpus Christi,
10 Texas within the Southern District of Texas, assaulted KG. KG
11 is a gay black man. During the assault, Serrata and Garza and
12 other co-conspirators hit and kicked KG and struck him with
13 numerous items, including a mug, a sock filled with batteries,
14 a frying pan, a belt and a broom as well as other items. Garza
15 also struck KG in the head with a handgun.

16 When KG began bleeding from the assaults, Garza
17 forced KG to remove his clothing and clean the bloody
18 apartment. While KG was naked, Garza pointed a gun at KG and
19 the co-conspirators forced KG to bend over and Serrata forced a
20 broomstick up KG's anus. Serrata sodomized KG because he is
21 gay. The handgun and broom had traveled in interstate
22 commerce. Throughout the assault, the co-conspirators called
23 KG "gay" and called him anti-gay slurs such as "faggot."

24 During the assault, the conspirators whipped KG on
25 his back multiple times with a belt and a broomstick while

1 calling KG a "nigger," a "slave" and other racial slurs. Garza
2 also poured bleach into KG's eyes and all over his body. The
3 assault caused serious bodily injury to KG.

4 **THE COURT:** Is that what happened in your case?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Is that what you did?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** What day did this happen?

9 **THE DEFENDANT:** March the 8th.

10 **THE COURT:** Where did it happen?

11 **THE DEFENDANT:** At a house on Elizabeth Street and
12 Tenth.

13 **THE COURT:** Whose house?

14 **THE DEFENDANT:** It was rented in my name, sir.

15 **THE COURT:** Did you live there?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Why was KG in your house?

18 **THE DEFENDANT:** To buy drugs, sir.

19 **THE COURT:** I'm sorry?

20 **THE DEFENDANT:** To buy drugs, sir.

21 **THE COURT:** Okay. And did he come in the house?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And when he was in the house, what did
24 you do to him?

25 **THE DEFENDANT:** I helped what happened.

1 **THE COURT:** What happened?

2 **THE DEFENDANT:** I mean, everything that was read,
3 sir, happened, sir.

4 **THE COURT:** I'm sorry?

5 **THE DEFENDANT:** Everything that was read happened,
6 sir.

7 **THE COURT:** Why did you do that?

8 **THE DEFENDANT:** I was -- I mean, I don't know, sir.
9 I wasn't in a right state of mind. I mean, I just -- just -- I
10 don't know -- heat of the moment, sir.

11 **THE COURT:** Well, was he called names?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** What names was he called?

14 **THE DEFENDANT:** Everything that was read, sir,
15 "faggot," "nigger," "slave," everything, sir.

16 **THE COURT:** Why?

17 **THE DEFENDANT:** Because of his race, I guess.

18 **THE COURT:** Why was he called "faggot"?

19 **THE DEFENDANT:** He seemed to be gay.

20 **THE COURT:** Did you find that offensive?

21 **THE DEFENDANT:** Not really, sir, but yeah.

22 **THE COURT:** Did you assault him because he was gay?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Did you assault him because he was black?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And did you and Garza and others do that
2 together?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** And did you speak of that before he came
5 into the house?

6 **THE DEFENDANT:** No, sir.

7 **THE COURT:** How is it that it got started that that's
8 what would happen?

9 **THE DEFENDANT:** I believe he owed money.

10 **THE COURT:** He owed money?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you agree that the Government could
13 prove that the firearm was used by one of the assaulters?

14 **THE DEFENDANT:** I don't know how to answer that
15 question, sir. I don't know.

16 **THE COURT:** I mean, do you agree that they could
17 prove it or not?

18 **THE DEFENDANT:** I believe so.

19 **THE COURT:** And who used the firearm?

20 **THE DEFENDANT:** Jimmy Garza.

21 **THE COURT:** Did you see that happen?

22 **THE DEFENDANT:** Yeah. Yes, sir.

23 **THE COURT:** And what did he do with the firearm?

24 **THE DEFENDANT:** Pistol whipped him.

25 **THE COURT:** Were you present?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And was that part of the beating that
3 everybody was administering?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Where was the firearm manufactured?

6 **MR. FISHMAN:** Your Honor, we do not know where the
7 firearm was manufactured.

8 **THE COURT:** What kind of firearm is it?

9 **MR. FISHMAN:** It's been described as a handgun.

10 **THE COURT:** You've never seen the firearm?

11 **MR. FISHMAN:** No, your Honor.

12 **THE COURT:** How do you know it traveled in interstate
13 commerce?

14 **MR. FISHMAN:** That was our understanding based on our
15 conversations with the Defendant.

16 **THE COURT:** What kind of firearm was it?

17 **THE DEFENDANT:** I don't know, sir. I never held it.
18 It was between a Glock 40 or 9 mm.

19 **THE COURT:** Did you see it?

20 **THE DEFENDANT:** I seen it. It was a silver color.

21 **THE COURT:** Do you know what caliber it was?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Do you know what manufacturer it was?

24 **THE DEFENDANT:** No, sir.

25 **THE COURT:** Had you ever held it?

1 **THE DEFENDANT:** No, sir.

2 **THE COURT:** What happened to the firearm?

3 **THE DEFENDANT:** I don't know, sir.

4 **THE COURT:** The Government must prove that this
5 matter -- that the firearm traveled in interstate commerce or
6 somehow affected interstate commerce and so you are accepting
7 that the Government could prove that. That is something that
8 the Government must prove or that the broom traveled in
9 interstate commerce or otherwise, there was an effect on
10 commercial activities that the victim was engaged in at the
11 time of the offense or the offense otherwise affected
12 interstate or foreign commerce. Those are matters that the
13 Government must prove.

14 Do you believe the Government can prove those
15 matters?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** How would the Government prove an
18 interference with commercial activities?

19 **MR. FISHMAN:** The victim was engaged in the purchase
20 of illegal narcotics at the time.

21 **THE COURT:** How would you prove that the offense
22 otherwise affected interstate or foreign commerce?

23 **MR. FISHMAN:** As a result of this particular assault,
24 that location having been used for the sale of commercial
25 drugs, was permanently closed down.

1 **THE COURT:** The broom was manufactured in Mexico?

2 **MR. FISHMAN:** Yes, your Honor.

3 **THE COURT:** How is that interstate commerce?

4 **MR. FISHMAN:** It was manufactured in Mexico and
5 traveled in interstate and foreign commerce to get into Texas
6 using a company based out of New Jersey facilitating the
7 transport of that broom into Texas.

8 **THE COURT:** I take it there were more people other
9 than you and Garza?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** How many more?

12 **THE DEFENDANT:** Two.

13 **THE COURT:** Why were you screaming or yelling at him
14 racial names?

15 **MR. FUGATE:** Judge, I think that was not my client
16 making the -- that was part of the conspiracy but it was other
17 Co-defendants that were doing that.

18 **THE COURT:** Did you yell racial names at him?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Did other people?

21 **THE DEFENDANT:** Sir?

22 **THE COURT:** Did others?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And what were you doing while they did
25 that?

1 **THE DEFENDANT:** Just aiding them, sir.

2 **THE COURT:** How so?

3 **THE DEFENDANT:** By physical force.

4 **THE COURT:** Were other people yelling that he was
5 gay?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Were you?

8 **THE DEFENDANT:** No, sir. I didn't find out he was
9 gay until after the fact that it was happening.

10 **THE COURT:** I'm sorry?

11 **THE DEFENDANT:** I didn't find out he was gay until
12 after the fact the assault was happening.

13 **THE COURT:** Well, it's alleged that you inserted a
14 broom in his rear end; is that true?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Why did you do that?

17 **THE DEFENDANT:** I have no idea, sir.

18 **THE COURT:** And when did you first believe he was
19 gay?

20 **THE DEFENDANT:** After I heard he was during the
21 assault.

22 **THE COURT:** During the assault?

23 **THE DEFENDANT:** Yes, sir.

24 **MR. FUGATE:** Judge, at the time that he committed the
25 -- or sodomized this man, he knew that he was gay and he's

1 already debriefed and he's given agents that story and that's
2 the truth. He was well aware that the man was gay and that's
3 why he did it.

4 Also, Judge, on the weapon, I know it's somewhat of a
5 stretch but I would suspect that an expert from ATF could come
6 into court and testify based on the description of that weapon
7 that it could not have been manufactured in Texas, based on my
8 experience of what I've seen.

9 **THE COURT:** Well, there are pistol manufacturers in
10 Texas.

11 **MR. FUGATE:** I understand that.

12 **THE COURT:** I mean, they may not be large but I'm
13 sure people in Texas can manufacture weapons. I don't know.

14 Well, if the parties want me to enter a finding of
15 guilty, I will. Anything further from the parties before I do?

16 **MR. FISHMAN:** No, your Honor.

17 **MR. FUGATE:** No, your Honor.

18 **THE COURT:** The Court enters a finding of guilty on
19 Counts One and Three. Sentencing is set for?

20 **THE CLERK:** December the 9th at 10:00 a.m.

21 **THE COURT:** Sentencing is set for the date announced
22 by the clerk. A presentence investigation is ordered.
23 Defendant is remanded.

24 **MR. FUGATE:** Judge, one request. He's in custody.
25 Is there any possible way we could get him back to Corpus

1 Christi or Robstown? He's in Brooks County right now and it's
2 a -- his family lives in Robstown and it's easier for me to
3 come over here.

4 **THE COURT:** Why is it easier for you to come this way
5 than it is to go that way?

6 **MR. FUGATE:** Because I have more business over here
7 and it's -- when I'm coming this way, I can double up.

8 **THE COURT:** Right.

9 Does Government intend to call this Defendant
10 Mr. Serrata as a witness?

11 **MR. FISHMAN:** Not potentially, your Honor.

12 **THE COURT:** Is there an agreement to do so and
13 provide evidence?

14 **MR. FUGATE:** That's correct, Judge. We're prepared
15 to do so.

16 **THE COURT:** Is that true?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** I'll see what I can do about that.

19 **MR. FUGATE:** Thank you, Judge.

20 **THE DEFENDANT:** Thank you, Judge.

21 **THE COURT:** You're excused.

22 **(This proceeding adjourned at 11:43 a.m.)**

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", positioned above a horizontal line.

May 3, 2016

TONI HUDSON, TRANSCRIBER